IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8575 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYRAJ N ZALA

Versus

MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 8575 of 1989

MR PH PATHAK for Petitioner No. 1

MR SV KOPPAR for Respondent No. 1

MR BA VAISHNAV for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR LB DABHI ASST GOVT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2004

ORAL JUDGEMENT

Heard learned advocate Mr.P.H.Pathak on behalf of the petitioner and learned advocate Mr.Biren Vaishnav for respondents. At the outset, it is stated before this Court by Mr.Pathak, learned advocate for the petitioner that the identical petition being Special Civil Application No.2742 of 1988 has been disposed of by this Court [Coram : Justice M.S.Shah, J.] vide order dated 3.3.2000 and therefore, this Court can pass order in the present petition on the line of the order passed in identical petition. This Court has perused the order dated 3.3.2000 passed by this Court in Special Civil Application No.2742 of 1988.

It is case of the petitioner that the petitioner is the employee of the Gujarat State Land Development Corporation, which is a Government Company registered under the Companies Act, 1956 working as a Watchman on daily wages basis by the Joint Director of Agriculture, Rajkot as per the order dated 20.9.82. It is case of the petitioner that initially he was appointed as the Watchman on daily wages basis for the period from 1982 to 1989 and from 1989 was posted as Peon vide order dated 2.6.1989 [Annexure- A]. The respondent Corporation came to be established and the employees working on the concerned schemes of the Agricultural Department were transferred on deputation to the respondent Corporation. With passage of time, the employees also came to be absorbed in the services of the respondent Corporation. The respondent Corporation, however, did not pass any orders in respect of the petitioner and other similarly situated employee as they were treated as daily wager employees. In the year 1988, the petitioner filed this petition praying for a writ to direct the respondent Corporation to treat the petitioner as regular employee of the respondent Corporation from the initial date of appointment and to grant the petitioner the time scale of pay and all other benefits of class IV regular employee of the respondents. The petitioner also prayed for a writ to direct the respondents to pay the petitioners difference of wages. The petitioner also prayed for interim relief in para 9 (E) in the following terms :-

"(E) Pending admission and final disposal of this petition be pleased to restrain the respondents from terminating, discharging or discontinuing the services of the petitioner and further direct to pay to the petitioner the minimum time scale of pay with all allowances to the petitioner payable to the regular Watchman / Peon of the Corporation."

2. On 18.12.1989, this Court issued notice and granted ad-interim relief and the order issued by this Court restrained the respondent Corporation from terminating, discharging or discontinuing the services of the petitioners. The ad-interim relief was thereafter extended from time to time. The petition was admitted on 29.9.1992 and the interim relief was ordered to continue.

3. In response to the notice, affidavit in reply was filed on 20.1.1990. It is contended by the respondents that the petitioner was daily wager contingency paid employees whose services were on daily wager basis and that their appointments were not made in a regular manner. Reliance is sought to be placed on certain decisions so also Mr Pathak for the petitioner has sought to place reliance on certain decisions.

It is further contended on behalf of the respondents that there is no sufficient work for the daily wagers at Morbi where the petitioners are presently working. That statement is disputed by Mr Pathak on behalf of the petitioners. However, it is not necessary to go into that controversy in view of the orders which this Court proposes to pass.

4. The fact remains that the petitioner has been in continuous employment of the respondents since last about 20 years. The petitioner was appointed in the Directorate of Agriculture which was a part of the State Government service and since the schemes on which the petitioner was working was transferred to the Gujarat State Land Development Corporation, the petitioners also came to be transferred to the Corporation. Considering the fact that the petitioner has already put in 20 years of service and further considering the fact that the interim relief is also in operation since last 15 years, and that in the normal course 20 years service' would even entitle an employee to opt for voluntary retirement and get pensionary benefits, this Court is not inclined to disturb that position. This, of course, would not mean that the petitioner is required to be continued at the same place even if there may not be adequate work for them. The respondent Corporation has its offices and premises all over the State and since the petitioner is now to be treated as employee of the respondent Corporation in the regular time scale with effect from 18.12.1989, when this Court granted ad-interim relief in their favour, it will be open to the respondent Corporation to avail of the services of the petitioner at any place in the State of Gujarat.

5. The petition is allowed and the respondent Corporation is directed to give the petitioners all the benefits of regular employees with effect from 18.12.1989 without any further liability to pay any further monetary benefit for the period during which the petition was pending before this Court for the last about 15 years.

6. Rule is accordingly made absolute with no order as to costs.

It is clarified that this order may not be treated as precedent as the order is passed in the peculiar facts and circumstances of the case particularly the facts that the petitioners have completed 20 years service and the ad-interim relief has been operating in favour of the petitioners since 1989. It is also clarified that it is open to the respondent Corporation to take services of the petitioner at any place in Gujarat.

Date : 20.9.2004 [H.K.Rathod, J.]

#kailash, ps#